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July 24, 2002

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VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

RECEIVED
JUL 24 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: WCB/Pricing 02-12
Written Ex Parte Filing

Dear Ms. Dortch:

On July 1, 2002, the Commission suspended and set for investigation the tariff filings by ACS of Anchorage, Inc. ("ACS") under Transmittal No. 11 and by the National Exchange Carrier Association under Transmittal No. 939.[1] As described in detail in the Petition to Suspend and Investigate filed by General Communication, Inc. ("GCI"),[2] ACS understated its demand forecast in developing its rates, and neither ACS nor NECA made any rate adjustment to account for overearnings already reported to the Commission at least for the first half of the 2001-2002 monitoring period.[3] GCI requests that the Commission designate the following issues for investigation.

Demand Forecast Methodology

First, the Commission should investigate the methodology used by ACS to forecast demand. ACS forecasted 436,005,751 minutes of use for July 2002-June 2003,[4]

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[1] 2002 Annual Access Tariff Filings, WCB/Pricing 02-12, Order, DA 02-1555 (Pric. Pol. Div. rel. July 1, 2002) ("Suspension Order") (suspending for one day and setting for investigation tariff filings identified in Appendix A thereto, including ACS of Anchorage, Inc. Tariff F.C.C. No. 1, Transmittal No. 11 (filed June 17, 2002) ("ACS 2002 Annual Access Tariff Filing") and NECA Tariff F.C.C. No. 5, Transmittal No. 939 (filed June 17, 2002) ("NECA 2002 Annual Access Tariff Filing").

[2] GCI Petition to Suspend and Investigate (filed June 24, 2002) ("GCI Petition"); see also AT&T Corp. Petition to Suspend and Investigate (filed June 24, 2002); WorldCom Petition to Suspend and Investigate (filed June 24, 2002).

[3] General Communication, Inc. v. Alaska Communications Systems, Inc., 16 FCC Rcd 2834 (2001) ("GCI Order"), on appeal ACS v. FCC, No. 01-1059 (D.C. Cir.)

[4] ACS 2002 TRP, DMD-1 at 3, col. A, line 230; ACS 2002 Cost Support, Attachment H at 1.

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which is over 60 million minutes less than its reported 2001 PYCOS local switching demand.[5] This precipitous decline stands in stark contrast to ACS' report of a 12 million decrease in local switching minutes between 2000 and 2001.[6] ACS claims that it employed "[a] linear regression model using access lines as an independent variable . . . to forecast Traffic sensitive switched access minutes of use."[7] Yet, ACS provided no documentation of any nature in support of the regression analysis that produced the facially unreasonable demand projection. And, there is no support for ACS' claim that national trends resulting from substitution by cable telephony and wireless services is applicable for the Anchorage market. First, ACS has made no attempt to quantify any affect of wireless usage on interstate minutes to and from Anchorage, and without this information, it is impossible to give any credence to its attempt to validate its dubious forecast. Second, there is no cable telephony provider in Anchorage.

Thus, it is imperative that the Commission require ACS to submit its linear regression model so that the Commission and interested parties can analyze the model as well as the access line independent variable employed by ACS in developing its demand forecasts. Without this information, the Commission and interested parties will be unable to assess the basis for the proposed demand figures, or any other demand figures that ACS might propose in their place. ACS should also submit the results of the "several regression forecasting techniques" it apparently considered and has discussed with Commission staff.[8] In addition, ACS should be directed to explain the circumstances under which it has previously used its linear regression model in developing tariffed rates for interstate access since 1995. For those interstate access tariff filings since 1995 that ACS has used other methodologies, it should be required to identify those methodologies and the results those methodologies would have produced if employed for the 2002 annual access tariff filing.

Moreover, a significant factual dispute exists over the effect of local number portability implementation and the resulting one-time event that would have caused an isolated decrease in ACS interstate access minutes over the 2000/2001 period. As GCI described in its Petition to Suspend, around August of 2000, AT&T Alascom implemented network changes to permit it to determine the correct local carrier to which

[5] ACS 2002 TRP, DMD-1 at 3, col. A, line 220 (reporting 2001 PYCOS local switching demand of 499,778,595).

[6] See id., col. A, lines 180-210 (sum of lines 180, 190, 200 and 210 is 511,339,628) and line 220.

[7] Id., Section 5, Part II.B. at 23.

[8] See id.; ACS *Ex Parte* Notice, WCB/Pricing 02-12 (filed July 11, 2002).

its interstate traffic should be delivered, and as a result, AT&T Alascom began to deliver interstate traffic destined to GCI local customers directly to the appropriate GCI switch.[9] GCI estimated for 1998,1999, and 2000 the interstate minutes that originated outside Alaska and should have been terminated to GCI in Anchorage. With these estimates, GCI demonstrated a smoother demand trend over the time period selected by ACS, and that the forecast should be adjusted accordingly.[10] ACS has urged the Commission to disregard GCI's adjustment because "the advent of LNP in Anchorage has not yet had any effect on the routing of this traffic."[11] GCI believes this statement is incorrect, and any revision in demand by ACS that fails to take into account the GCI adjustment is simply wrong. Based on ACS' unsubstantiated claim to the contrary, it is plain that this factual dispute can only be resolved through an investigation of the routing of inbound interstate traffic to GCI customers over the time period used to forecast demand.

Overearnings Adjustments

As rate-of-return regulated filers, ACS and NECA are required to set and adjust rates to avoid exceeding the Commission's rate of return prescription over a two-year monitoring period.[12] Earnings reports filed by both ACS and NECA thus far in the 2001-2002 monitoring period demonstrate excessive earnings. ACS has posted a rate of return of 39.72 percent in the switched traffic sensitive category, and 21.37 percent return in the special access category,[13] and NECA has reported a 12.25 percent return in the common line category, 17.76 percent return in the special access category, and 12.74 percent return in the switched traffic sensitive traffic category.[14] The Commission should direct each to explain why it will not violate the prescribed rate of return for the 2001-2002

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[9] GCI Petition to Suspend at 5.

[10] Id. at 6 (graph).

[11] ACS Opposition, WCB/Pricing 02-12, (filed June 28, 2002) at 5.

[12] See General Communication, Inc. v. Alaska Communications Systems, Inc., 16 FCC Rcd 2834, 2836 (¶ 5) (2001) (citing MCI Telecom. Corp. v. FCC, 59 F.3d 1407, 1414 (D.C. Cir. 1995); Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements, Report and Order, 1 FCC Rcd 952, 954 (1986) ("Rate of Return Prescription Order"), recon. denied, 2 FCC Rcd 5340 (1987)), aff'd in part, vacated in part, and remanded in part ACS v. FCC, 290 F.3d 403 (D.C. Cir. 2002).

[13] GCI Petition to Suspend and Investigate, EXHIBIT 2.

[14] Id. at EXHIBIT 3.

monitoring period if it does not adjust its rates to account for earnings already collected for the monitoring period.

In addition, each should submit the calculated rate adjustment(s) that would be required to target earnings in each category (common line, special access, and traffic sensitive) for the entire 2001-2002 monitoring period to comply with the prescription, and all cost studies and work papers supporting the calculated rate adjustment(s). At bottom, the Commission has prescribed a rate of return that applies both in rate development and for regulating earnings over the monitoring period, and there is no basis for the failure to comply with — or enforce — this lawful prescription as part of the tariffing process.

Sincerely yours,

Tina M. Pidgeon

cc: Tamara Preiss
Jeff Dygert
Rhonda Lien
Doug Slotten
Doug Galbi
Noel Uri
via electronic mail